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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/656,545 | 09/05/2003 | Thomas A. DeBusk | 0090084 | 8176 |
| 9355 | 7590 | 03/11/2005 | EXAMINER | |
| ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, PA | | | HRUSKOCI, PETER A | |
| P.O. BOX 3791 | | | ART UNIT | PAPER NUMBER |
| ORLANDO, FL 32802-3791 | | | 1724 | |

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,545

Applicant(s)

DEBUSK, THOMAS A.

Examiner

Peter A. Hruskoci

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to a method, classified in class 210, subclass 724.
- II. Claims 20-33, drawn to a system, classified in class 210, subclass 170.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the system as claimed can be used in a materially different method such as hydrocarbon recovery method.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jacqueline E. Hartt on 3/8/05 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. 112, first paragraph as failing to provide a clear written description of the invention. In the specification on pages 5 and 6 it is unclear

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how the “matrix element” provides a surface onto which floc can settle when it is floating as shown in Fig. 2. Clarification and/or correction are required.

Claims 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear in claim 16 how the “root mat of floating vegetation” permits the floc to settle. Claims 17 and 18 depend from claim 16.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. 6,251,264. Tanaka et al. disclose (see col. 8 lines 21-43, and col. 13 line 58 through col. 15 line 50) disclose a method for treating water substantially as claimed. The claims differ from Tanaka et al. by reciting a step for mixing new water with the floc to resuspend components of the floc. It is submitted that the dissolved inorganic coagulant, sludge, and photocatalyst particles accumulated in the process reservoir 1 of Tanaka et al. would appear to include at least some floc which is mixed with new water introduced to the reservoir. It would have been obvious to one skilled in the art to modify the method of Tanaka et al. by including the recited step for mixing new water with the floc, to aid in reusing the coagulant. The addition of a second dose of coagulant to the enclosure, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific water treated and results desired, absent a sufficient showing of unexpected results. With regard to claims 15 and 19, it is

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submitted that the matrix element and filter media are considered patentably indistinguishable from the photocatalyst particles of Tanaka et al.

Claims 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. 6,251,264 as above, and further in view of DeBusk et al. 6,413,426. The claims differ from Tanaka et al. as applied above, by reciting a specific pollutant, specific steps for pumping the treated water and settled floc, and a specific water column and vertical barrier. DeBusk et al. disclose (see col. 5 line 18 through col. 6 line 58) that it is known in the art pump treated water and viscous bottom layer from an enclosure including a water column and vertical barrier, used to separated phosphorus pollutants from water with a aluminum coagulant. It would have been obvious to one skilled in the art to modify the method of Tanaka et al. by utilizing the recited pumping steps, water column, and vertical barrier, in view of the teachings of DeBusk et al., to aid in separating phosphorus pollutants from a body of water.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter A. Hruskoci
Primary Examiner
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3/9/05